

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

**In re application of:
Jacqueline Evynne Breuninger Buskop**

Group Art Unit: 3677

Serial Number: 10/675,515

Examiner: Reese, David C

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**For: ADVERTISING DEVICE FOR
PRODUCE AND CANDY VENDORS**

Attorney Docket Number: 1207.01A

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Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

APPELLANT'S SUPPLEMENTAL BRIEF ON APPEAL

This brief is in furtherance of the Notice of Non-Compliant Appeal Brief mailed July 9, 2008.

If an extension of time is required to enable this paper to be timely filed, this paper is to be construed as also constituting a Petition for Extension of Time under 37 CFR § 1.136(a) for a period of time sufficient to enable this document to be timely filed. Should any other fee be deemed necessary for any other reason relating to this document, the Commissioner is hereby authorized to deduct said fee from **Buskop Law Group Deposit P.C., Account No. 50-1313**.

This Supplemental Brief contains a replacement section III, "Status of Claims," and a replacement Section V, "Summary of Claimed Subject Matter."

III. STATUS OF CLAIMS

Claims 1, 5, 7-9, and 13 remain pending in this application.

Claims 1 and 8 are on appeal.

Claim 1:

has been objected to;

has been rejected under 35 USC §112 first paragraph; and

has been rejected under 35 USC § 103(a) as being unpatentable over *Westmoland* (US 5,201,578), in view of *Bradley* (US 2,180,726), and in further view of case law.

Claims 2-4 have been cancelled.

Claim 5 has been rejected under 35 USC § 103(a) as being unpatentable over *Westmoland* (US 5,201,578), in view of *Bradley* (US 2,180,726), and in further view of case law.

Claim 6 has been cancelled.

Claim 7 has been rejected under 35 USC § 103(a) as being unpatentable over *Westmoland* (US 5,201,578), in view of *Bradley* (US 2,180,726), and in further view of case law.

Claim 8:

has been objected to;

has been rejected under 35 USC §112 first paragraph; and

has been rejected under 35 USC § 103(a) as being unpatentable over *Westmoland*

(US 5,201,578), in view of *Bradley* (US 2,180,726), in view of *Johnson* (US 6,619,816), and in even further view of case law.

Claim 9 has been rejected under 35 USC § 103(a) as being unpatentable over *Westmoland* (US 5,201,578), in view of *Bradley* (US 2,180,726), in view of *Johnson* (US 6,619,816), and in even further view of case law.

Claims 10-12 have been cancelled.

Claim 13 has been rejected under 35 USC § 103(a) as being unpatentable over *Westmoland* (US 5,201,578), in view of *Bradley* (US 2,180,726), in view of *Johnson* (US 6,619,816), and in even further view of case law.

Claim 14 has been cancelled.

Claims 1, 5, 7-9, and 13 are listed in the Claims Appendix. Claims 1 and 8 are on appeal.

V. SUMMARY OF CLAIMED SUBJECT MATTER

Claim 1 is directed to an advertising device for produce vendors.

The device includes at least one earring clip (10) with a back side (11) and front side (13) for engaging a non-pierced ear (100). [Page 2, Paragraph [00011], Lines 18-19; and Figures 1 and 2, Reference Numbers 10, 11, and 13] Figure 1 depicts that the earring clip (10) has an earring body, which is depicted as a generally circular structure, which terminates at the front side (13) at a first end, and at the back side (11) at the opposite end, with sufficient space between the front side (13) and back side (11) to accommodate a non-pierced ear (100).

At least one line (19) is axially secured to the earring clip between the earring clip (10) and a hook (12), used to connect the hook (12) to the earring clip (10). [Page 3, Paragraph [00018], Lines 25-26; and Figure 3, Reference Number 19] Figure 3 depicts the vertical axial alignment of the line (19) with the hook (12).

A first hook (12) and a second hook (24) are axially secured to the line (19). [Page 2, Paragraph [00011], Lines 19-20; Page 3, Paragraph [00012], Lines 1-2; and Figure 3, Reference Numbers 12 and 24]. The hooks (12, 24) are vertically axially aligned with each other, as shown in Figure 3. The hooks (12, 24) are also vertically axially aligned with the line (19), as shown in Figure 3. In a preferred embodiment, the hook is between 1.5 inches and 3 inches in overall length. [Page 3, Paragraph [00014], Lines 11-12]

The first hook (12) has at least a first prong and a second prong for engaging at least a first of the edible food items (14), and the second hook (15) has at least a third prong (22) and a fourth prong (24) for engaging at least a second of the edible food items (14a, 14b). [Page 3, Paragraph [00014], Lines 11-14; and Figure 2, Reference Numbers 22, 24, 14, 14a, and 14b]

At least a first of the edible food items (14) is removably secured to the first hook (12) by at least partially penetrating the first edible food item (14), and at least a second of the edible food items (14a, 14b) is removably secured to the second hook (15) by at least partially penetrating the second edible food item (14a, 14b). [Page 3, Paragraph [00015], Lines 15-16;

Page 3, Paragraph [00016], Line 22; and Figure 2, Reference Numbers 14, 14a, and 14b].

The edible food items consist of fruits, vegetables, or combinations of these items. [Page 3, Paragraph [00015], Lines 15-18] Paragraph [00015] describes that fruits and/or vegetables can include blueberries, strawberries, druid fruits, blackberries, cherry tomatoes, and other fruits and vegetables with similar sturdy yet pierce-able skins.

An automatic LED (16) is disposed on a lower portion of the front side (13) for lighting the different edible food items (14, 14a, 14b). [Page 3, Paragraph [00013], Lines 4-5; and Figure 2, Reference Number 16] Paragraph [00013] describes that the automatic LED (16) can automatically light up the hook (12) in dim light, can be a blinking light, and can have a switch (20) secured to the earring clip (10).

The automatic LED (16) is electrically insulated from the earring clip (10). [Page 3, Paragraph [00013], Lines 3-4; and Figure 2, Reference Numbers 10 and 16] It is inherent that the earring clip (10) for a non-pierced ear will not create a complete circuit to conduct power to the automatic LED (16), and therefore, the automatic LED (16) must have its own circuitry that is insulated from the earring clip (10) in order to function properly.

The automatic LED (16) is a blinking light that can be actuated by a switch (20) secured to the earring clip (10). [Page 3, paragraph [00013], Lines 5-6; and Figure 2, Reference Number 20]

Claim 8 is directed to an advertising device for candy vendors.

The device includes at least one earring clip (10) with a back side (11) and front side (13) for engaging a non-pierced ear (100). [Page 2, Paragraph [00011], Lines 18-19; and Figures 1 and 2, Reference Numbers 10, 11, and 13] Figure 1 depicts that the earring clip (10) has an earring body, which is depicted as a generally circular structure, which terminates at the front side (13) at a first end, and at the back side (11) at the opposite end, with sufficient space between the front side (13) and back side (11) to accommodate a non-pierced ear (100).

At least one line (19) is axially secured to the earring clip between the earring clip (10) and a hook (12), used to connect the hook (12) to the earring clip (10). [Page 3, Paragraph

[00018], Lines 25-26; and Figure 3, Reference Number 19] Figure 3 depicts the vertical axial alignment of the line (19) with the hook (12).

A first hook (12) and a second hook (24) are axially secured to the line (19). [Page 2, Paragraph [00011], Lines 19-20; Page 3, Paragraph [00012], Lines 1-2; and Figure 3, Reference Numbers 12 and 24]. The hooks (12, 24) are vertically axially aligned with each other, as shown in Figure 3. The hooks (12, 24) are also vertically axially aligned with the line (19), as shown in Figure 3. In a preferred embodiment, the hook is between 1.5 inches and 3 inches in overall length. [Page 3, Paragraph [00014], Lines 11-12]

The first hook (12) has at least a first prong and a second prong for engaging at least a first of the chewy candy items (14), and the second hook (15) has at least a third prong (22) and a fourth prong (24) for engaging at least a second of the chewy candy items (14a, 14b). [Page 3, Paragraph [00014], Lines 11-14; and Figure 2, Reference Numbers 22, 24, 14, 14a, and 14b]

At least a first of the chewy candy items (14) is removably secured to the first hook (12) by at least partially penetrating the first edible food item (14), and at least a second of the chewy candy items (14a, 14b) is removably secured to the second hook (15) by at least partially penetrating the second edible food item (14a, 14b). [Page 3, Paragraph [00015], Lines 15-16; Page 3, Paragraph [00016], Line 22; and Figure 2, Reference Numbers 14, 14a, and 14b].

The chewy candy items are contemplated to include soft licorice, soft raspberries, juicy fruits, and similar soft yet pierce-able candies. [[Page 3, Paragraph [00017], Lines 23-24]

An automatic LED (16) is disposed on a lower portion of the front side (13) for lighting the different edible food items (14, 14a, 14b). [Page 3, Paragraph [00013], Lines 4-5; and Figure 2, Reference Number 16] Paragraph [00013] describes that the automatic LED (16) can automatically light up the hook (12) in dim light, can be a blinking light, and can have a switch (20) secured to the earring clip (10).

The automatic LED (16) is electrically insulated from the earring clip (10). [Page 3, Paragraph [00013], Lines 3-4; and Figure 2, Reference Numbers 10 and 16] It is inherent that the earring clip (10) for a non-pierced ear will not create a complete circuit to conduct power to the automatic LED (16), and therefore, the automatic LED (16) must have its own circuitry that

is insulated from the earring clip (10) in order to function properly.

The automatic LED (16) is a blinking light that can be actuated by a switch (20) secured to the earring clip (10). [Page 3, paragraph [00013], Lines 5-6; and Figure 2, Reference Number 20]

In view of the foregoing, Appellant believes that the Appeal Brief is now compliant with all requirements.

The undersigned attorney may be contacted at (713) 275-3400 with respect to any questions, comments, or suggestions in relation to this appeal.

Respectfully submitted,

A handwritten signature in dark ink, reading "Wendy Buskop", written over a horizontal line.

Wendy Buskop
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Date: July 15, 2008

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